

1 David D. Bibiyan (SBN 287811)
david@tomorrowlaw.com

2 Jeffrey D. Klein (SBN 297296)
jeff@tomorrowlaw.com

3 Sarah H. Cohen (SBN 330700)
sarah@tomorrowlaw.com

4 **BIBIYAN LAW GROUP, P.C.**

1460 Westwood Blvd.

5 Los Angeles, California 90024

Tel: (310) 438-5555; Fax: (310) 300-1705

6 Attorneys for Plaintiff, MACKENZIE ANNE THOMA,
7 and on behalf of herself and all others similarly situated

8 **UNITED STATES DISTRICT COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 MACKENZIE ANNE THOMA, a.k.a.
12 KENZIE ANNE, an individual and on
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 VXN GROUP LLC, a Delaware limited
17 liability company; STRIKE 3
18 HOLDINGS, LLC, a Delaware limited
19 liability company; GENERAL MEDIA
20 SYSTEMS, LLC, a Delaware limited
21 liability company; MIKE MILLER, an
22 individual; and DOES 1 through 100,
23 inclusive,

24 Defendants.

CASE NO: 2:23-cv-04901-WLH
(AGRx)

*[Assigned for all purposes to the Hon.
Wesley L. Hsu]*

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO
BIFURCATE**

HEARING INFORMATION

DATE: May 17, 2024
TIME: 1:30pm or later.
COURTRM: 9B

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	LEGAL STANDARDS.....	3
III.	LEGAL ARGUMENT.....	5
	A. PUTATIVE CLASS MEMBERS’ PRIVATE	
	INFORMATION WILL BE PROTECTED IF CLASS	
	WIDE DISCOVERY IS ALLOWED TO PROCEED.....	3
	B. DEFENDANTS’ FAIL TO MEET THEIR BURDEN	
	TO SHOW BIFURCATION IS APPROPRIATE.....	5
	1. There Is Considerable Overlap In Discovery	
	Between The Matters.....	5
	2. Bifurcation Would Not Support The Purpose	
	of Rule 23(c)(1)(A).....	9
	3. Bifurcation Does Not Support The Judicial	
	Economy	11
	4. Plaintiff Will Be Prejudiced Should This Motion	
	Be Granted	13
IV.	CONCLUSION.....	15

TABLE OF AUTHORITIES

Statutory Authority and Local Rules

Fed. R. Civ. P. 23 (c)(1)(A).....	1, 2, 3, 7, 9, 11
Fed. R. Civ. P. 42.....	3
Fed. R. Civ. P. 26	4

Case Authority

<i>True Health Chiropractic Inc v. McKesson Corp.</i> , No. 13-CV-02219-JST, 2015 WL 273188 (N.D. Cal. Jan. 20, 2015).....	1, 3, 5, 9, 12
<i>Reed v. AutoNation, Inc.</i> , No. CV1608916BROAGR, X, 2017 WL 6940519 (C.D. Cal. Apr. 20, 2017).....	1, 2, 3, 6, 9, 12, 14
<i>Zahedi v. Miramax, LLC</i> , No. CV 20-4512-DMG (EX), 2021 WL 3260603 (C.D. Cal. Mar. 24, 2021)	1, 4
<i>Ellingson Timber Co. v. Great N. Ry. Co.</i> , 424 F.2d 497, 498 (9th Cir. 1970).....	3
<i>Hangarter v. Provident Life & Acc. Ins. Co.</i> , 373 F.3d 998, 1021 (9th Cir. 2004).	3
<i>Wixen Music Publ'g, Inc. v. Triller, Inc.</i> , No. 220CV10515JVSJCGX, 2021 WL 4816627 (C.D. Cal. Aug. 11, 2021).	3
<i>Kerr v. U. S. Dist. Ct. for N. Dist. of California</i> , 426 U.S. 394, 403 (1976).....	4
<i>Nat.-Immunogenics Corp. v. Newport Trial Grp.</i> , No. SACV1502034JVSJCGX, 2018 WL 6136784 (C.D. Cal. Apr. 17, 2018)	4, 6
<i>Pioneer Elecs. (USA), Inc. v. Superior Ct.</i> , 40 Cal. 4th 360, 373 (2007).	4, 5

1	<i>Atiqi v. Acclaim Tech. Servs., Inc.,</i>	
2	No. EDCV14628VAPSPX, 2015 WL 13914834	
3	(C.D. Cal. Dec. 23, 2015).....	5
4	<i>Gusman v. Comcast Corp.,</i>	
5	298 F.R.D. 592 (S.D.Cal.2014)	5,7
6	<i>Johansen v. Loandepot.com LLC,</i>	
7	No. SACV2000919DOCJDE, 2020 WL 7230976	
8	(C.D. Cal. Nov. 10, 2020).....	6, 9, 14, 15
9	<i>Ward v. Crow Vote LLC,</i>	
10	No. SACV211110JVSDFMX, 2022 WL 2046103	
11	(C.D. Cal. Mar. 17, 2022).....	6
12	<i>Ahmed v. HSBC Bank USA, Nat'l Ass'n,</i>	
13	No. EDCV152057FMOSPX, 2018 WL 501413	
14	(C.D. Cal. Jan. 5, 2018).	6
15	<i>Blair v. Assurance IQ LLC,</i>	
16	No. C23-0016-KKE, 2023 WL 6622415	
17	(W.D. Wash. Oct. 11, 2023).	7
18	<i>Drennan v. Maryland Cas. Co.,</i>	
19	366 F. Supp. 2d 1002, 1008 (D. Nev. 2005).....	7, 8
20	<i>Young v. Mophie, Inc.,</i>	
21	No. SACV19827JVSDFMX, WL 1000578	
22	(C.D. Cal. Jan. 7, 2020).....	8, 11, 12
23	<i>Deleon v. Time Warner Cable LLC,</i>	
24	No. CV 09-2438 AG (RNBX), 2009 WL 10674767	
25	(C.D. Cal. Nov. 2, 2009).....	8, 9
26	<i>Kamrava v. Cenlar Cap. Corp.,</i>	
27	No. 220CV11465ABEX, 2021 WL 10373035	
28	(C.D. Cal. Oct. 7, 2021).....	9, 10, 12, 14

1	<i>Gravity Defyer Corp. v. Under Armour, Inc.</i> ,	
2	No. LACV13-01842 JAK (JCGx),	
3	2013 WL 12138987, (C.D. Cal. July 23, 2013).....	11
4	<i>Lim v. Nat'l Gen. Ins. Co.</i> ,	
5	No. C15-0383RSL, 2015 WL 12025327,	
6	(W.D. Wash. June 25, 2015)	11
7	<i>White v. E-Loan, Inc.</i> ,	
8	No. C 05-02080 SI, 2006 WL 2850041	
9	(N.D. Cal. Oct. 5, 2006).....	11

Secondary Sources

11	<i>McLaughlin on Class Actions</i> Section 3:10 (11 th edition 2014).....	1, 3
----	--	------

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Mackenzie Anne Thoma (“Plaintiff” or “Ms. Thoma”) hereby submits the following opposition to defendants VXN Group LLC (“VXN”); Strike 3 Holdings, LLC (“STRIKE 3”); General Media Systems, LLC (“GMS”); and Mike Miller’s (“MILLER” and collectively with VXN, STRIKE 3, and GMS, “Defendants”) meritless Motion to Bifurcate Discovery intended solely to cause further delays in the resolution of this action (the “Motion”).

Courts within the 9th circuit use several factors to determine whether bifurcation is appropriate. These factors are 1) whether the discovery for the two potentially bifurcated issues overlap, 2) whether bifurcation promotes the intended purpose of Rule 23 (c)(1)(A)’s requirement to have certification occur as soon as reasonably possible, 3) whether bifurcation benefits the judicial economy, and 4) whether either party will be prejudiced by the granting or denial of the bifurcation. *McLaughlin on Class Actions* Section 3:10 (11th edition 2014); *True Health Chiropractic Inc v. McKesson Corp.*, No. 13-CV-02219-JST, 2015 WL 273188 at 1-2 (N.D. Cal. Jan. 20, 2015). Some courts within the Central District of California use another similar, although slightly different, set of factors. These factors allow the court to consider 1) the separability of the issues the moving party is attempting to bifurcate, 2) simplification of discovery and conservation of resources, and 3) prejudice. *Reed v. AutoNation, Inc.*, No. CV1608916BROAGRX, 2017 WL 6940519 at 7 (C.D. Cal. Apr. 20, 2017). **It is the moving party’s burden to show that these factors weigh in favor of bifurcation.**

Defendants not only fail to meet their burden to demonstrate bifurcation is necessary, but also rely on both outdated and distinguishable cases to indicate that bifurcation of discovery is appropriate at this juncture. Yet, as can be seen by a plethora of case law, the Central District of California does not favor the bifurcation of individual merits-based discovery from class discovery. See *Zahedi v. Miramax*,

1 *LLC*, No. CV 20-4512-DMG (EX), 2021 WL 3260603 at 2 (C.D. Cal. Mar. 24, 2021)
2 (stating “this Court generally does not endorse bifurcated discovery proceedings...”).

3 Bifurcation is not appropriate here because **every single factor used to**
4 **determine whether bifurcation is appropriate weighs against bifurcation.** There
5 is no doubt that discovery between Plaintiff’s individual standing overlaps with the
6 typical certification discovery. Specifically, to determine whether Plaintiff was an
7 employee, Defendants would have to produce essentially the same exact discovery
8 that it would for standard pre-certification discovery. To determine whether Plaintiff
9 was an employee, Defendants would need to produce Plaintiff’s time records, wage
10 statements, schedules, Defendants’ policies and procedures, and hiring and
11 termination documents, to the extent that these documents exist. All of these are
12 standard documents required to be produced in standard precertification discovery.
13 Furthermore, putative class member contact information need to be produced as every
14 putative class member in this matter are potential fact witnesses to Plaintiff’s claims.
15 Defendants have failed to prove that there is any *real and imminent* threat to any
16 putative class members should their true identities be revealed to Plaintiff and
17 Plaintiff’s counsel. Additionally, the same persons would be deposed in both matters
18 and both sides would likely use the same experts in making similar determinations.

19 Furthermore, bifurcation would not support Rule 23 (c)(1)(A)’s intended
20 purpose and would only serve to extend the time it would take for certification to be
21 heard. This is compounded by the extreme delay caused by Defendants’ filings of
22 frivolous motions. Also, bifurcation in this matter will in no way serve to save the
23 court judicial resources and will, in fact, only serve to increase the burdens on this
24 court. See *Reed* at 7 (stating “...bifurcating discovery may result in twice as many
25 conflicts; (2) if the Court does not grant Defendant's Motion for Summary Judgment
26 on the standing issue the parties will have to depose many of the relevant parties twice,
27 resulting in significant expense to Plaintiff and Plaintiff's counsel”). Finally, there is
28 no doubt that Plaintiff would be unduly prejudiced if discovery is bifurcated while

1 Defendants stand little chance of being prejudiced. As such, it is clear that the Motion
2 must denied in its entirety.

3 **II. LEGAL STANDARDS**

4 Power is given to courts to bifurcate claims in cases under Fed. R. Civ. P. 42.
5 Implicit with this power is the ability for a court to bifurcate discovery. *Ellingson*
6 *Timber Co. v. Great N. Ry. Co.*, 424 F.2d 497, 498 (9th Cir. 1970). Yet, whether to
7 bifurcate is left to the sound discretion of the court, and the court is not required to
8 bifurcate. See *Hangarter v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1021 (9th
9 Cir. 2004). Additionally, **the party seeking bifurcation bears the burden** of
10 establishing that **“bifurcation will promote judicial economy or avoid**
11 **inconvenience or prejudice to the parties.”** *Wixen Music Publ'g, Inc. v. Triller, Inc.*,
12 No. 220CV10515JVSAFMX, 2021 WL 4816627 at 1 (C.D. Cal. Aug. 11, 2021).

13 Courts within the 9th circuit, including the Central District of California, use
14 several factors to determine whether bifurcation is appropriate. These factors are 1)
15 whether the discovery for the two potentially bifurcated issues overlap, 2) whether
16 bifurcation promotes the intended purpose of Rule 23 (c)(1)(A)’s requirement to have
17 certification occur as soon as reasonably possible, 3) whether bifurcation benefits the
18 judicial economy, and 4) whether either party will be prejudiced by the granting or
19 denial of the bifurcation. *McLaughlin on Class Actions* Section 3:10 (11th edition
20 2014); *True Health Chiropractic Inc v. McKesson Corp.*, No. 13-CV-02219-JST,
21 2015 WL 273188 at 1-2 (N.D. Cal. Jan. 20, 2015). Some courts within the Central
22 District use another similar, although slightly different, set of factors. These factors
23 allow the court to consider 1) the separability of the issues the moving party is
24 attempting to bifurcate, 2) simplification of discovery and conservation of resources,
25 and 3) prejudice. *Reed v. AutoNation, Inc.*, No. CV1608916BROAGRX, 2017 WL
26 6940519 at 7 (C.D. Cal. Apr. 20, 2017).

27 Although Fed. R. Civ. P. 42 grants courts authority to bifurcate proceedings
28 and discovery, the **Supreme Court has stated its disfavor of “piecemeal litigation.”**

1 *Kerr v. U. S. Dist. Ct. for N. Dist. of California*, 426 U.S. 394, 403 (1976); see also
2 *Nat.-Immunogenics Corp. v. Newport Trial Grp.*, No. SACV1502034JVSJCGX,
3 2018 WL 6136784 at 2 (C.D. Cal. Apr. 17, 2018) (stating “[P]iecemeal trial of
4 separate issues in a single suit **is not to be the usual course...**”) Rather, “in an era of
5 excessively crowded lower court dockets, **it is in the interest of the fair and prompt**
6 **administration of justice to discourage piecemeal litigation.**” *Ibid.* This sentiment
7 is echoed within the Central District of California in *Zahedi*, where it was stated that
8 “this Court generally does not endorse bifurcated discovery proceedings...” *Zahedi*
9 *v. Miramax, LLC*, No. CV 20-4512-DMG (EX), 2021 WL 3260603 at 2 (C.D. Cal.
10 Mar. 24, 2021). Therefore, it is clear that bifurcation is heavily disfavored and should
11 be avoided.

12 **III. LEGAL ARGUMENT**

13 **A. PUTATIVE CLASS MEMBERS’ PRIVATE INFORMATION WILL** 14 **BE PROTECTED IF CLASS WIDE DISCOVERY IS ALLOWED** 15 **TO PROCEED**

16 Fed. R. Civ. P. 26 requires the disclosure of the names, telephone numbers, an
17 addresses of all persons with “discoverable information.” Putative class members all
18 have discoverable information on this action, such as Defendants’ policies and
19 procedures, the hours they worked, and type of work they performed. Also, “contact
20 information regarding the identity of potential class members is generally
21 discoverable.” *Pioneer Elecs. (USA), Inc. v. Superior Ct.*, 40 Cal. 4th 360, 373 (2007).

22 Defendants state that by not bifurcating discovery, putative class members risk
23 having their private information exposed to the general public. Courts have regularly
24 and heavily litigated the matter of class member privacy rights in class actions. There
25 are many avenues the parties can take that are relatively inexpensive that would ensure
26 putative class members have their privacy protected. For example, in *Atiqi*, the court
27 held that notice and opportunity to opt-out prior to disclosure of their personally
28 identifiable information and work-related records, similar to a *Belaire-West* opt out

1 notice, will sufficiently protect the privacy rights of employees. *Atiqi v. Acclaim Tech.*
2 *Servs., Inc.*, No. EDCV14628VAPSPX, 2015 WL 13914834 at 4 (C.D. Cal. Dec. 23,
3 2015).

4 Indeed, the Supreme Court ruled that notice to class members of disclosure of
5 personal information in discovery, unless putative class members opted out,
6 adequately protected class members' privacy rights. *Pioneer Elecs. (USA), Inc. v.*
7 *Superior Ct.*, 40 Cal. 4th 360, 366 (2007). The Supreme Court also found that "the
8 disclosure of putative class members' contact information typically 'involves no
9 revelation of personal or business secrets, intimate activities, or similar private
10 information, and threatens no undue intrusion into one's personal life..." *Id* at 373.

11 Additionally, Plaintiff is of course open and willing to protect putative class
12 members privacy rights by entering a protective order to ensure sensitive information
13 does not become public. Plaintiff has the utmost interest in protecting the privacy
14 rights of individuals such as Kayden Kross and Plaintiff. Yet, stifling discovery that
15 Plaintiff is entitled to is not the proper resolution. This is hardly the first class action
16 where class member privacy is at issue, and there are well-established methods
17 accepted by district courts to safeguard putative class members' privacy rights.

18 **B. DEFENDANTS' FAIL TO MEET THEIR BURDEN TO SHOW**
19 **BIFURCATION IS APPROPRIATE**

20 **1. There Is Considerable Overlap In Discovery Between The**
21 **Matters**

22 9th Circuit courts, especially those in the Central District of California, are
23 clear; certification-based and merits-based discovery should typically *not* be
24 bifurcated. 9th Circuit courts have held that class and individual discovery typically
25 overlap to the point where this factor weighs strongly against bifurcation. See *True*
26 *Health Chiropractic Inc v. McKesson Corp.*, No. 13-CV-02219-JST, 2015 WL
27 273188 at 2 (N.D. Cal. Jan. 20, 2015) (holding "Typically, however, the two
28 [individual and class based discovery] do overlap, and the Court concludes that the

1 same will be true here’.); See also *Gusman v. Comcast Corp.*, 298 F.R.D. 592, 595
2 (S.D.Cal.2014) (holding “[T]he merits/certification distinction is not always clear.
3 Facts that are relevant to the class determination frequently will overlap with those
4 relevant to the merits of the case.”) For example, in *Reed*, a wage and hour class action
5 case, the Central District of California refused to bifurcate discovery as to the standing
6 of the plaintiff because the plaintiff’s standing would hinge on the policies and
7 procedures put in place by defendant. *Reed v. AutoNation, Inc.*, No.
8 CV1608916BROAGRX, 2017 WL 6940519 at 7 (C.D. Cal. Apr. 20, 2017). As such,
9 bifurcation was denied.

10 Similarly, in *Johansen*, the court once again refused to bifurcate individual and
11 class discovery because of the overlap between the issues. *Johansen v.*
12 *Loandepot.com LLC*, No. SACV2000919DOCJDE, 2020 WL 7230976 (C.D. Cal.
13 Nov. 10, 2020) at 1. The court even stated that “**such overlap is common**” in class
14 actions. *Ibid*; see also *Ward v. Crow Vote LLC*, No. SACV211110JVSDFMX, 2022
15 WL 2046103 at 2 (C.D. Cal. Mar. 17, 2022) (“Courts often find that there is overlap
16 between class discovery and other issues.”)

17 The Central District of California further held that “the distinction between
18 class certification and merits discovery is murky at best and impossible to determine
19 at worst.” *Ahmed v. HSBC Bank USA, Nat’l Ass’n*, No. EDCV152057FMOSPX, 2018
20 WL 501413 at 3 (C.D. Cal. Jan. 5, 2018). The Central District of California has even
21 held that the discovery between the two potentially bifurcated matters **does not have**
22 **to be the same, all that is necessary is for there to be considerable overlap to**
23 **weigh against bifurcation**. *Nat.-Immunogenics Corp. v. Newport Trial Grp.*, No.
24 SACV1502034JVSJCGX, 2018 WL 6136784 at 2 (C.D. Cal. Apr. 17, 2018) (stating
25 “The Court notes, however, that it is not clear that all evidence from these other cases
26 would be relevant with respect to each individual Defendant. Nonetheless, the Court
27 finds that the overlap in the evidence between the malicious prosecution claim and
28 the RICO claims weighs heavily against bifurcation.”)

1 Additionally, in *Blair*, the court stated that “the distinction between merits
2 discovery and class discovery ‘is not always clear,’ and ‘[m]any courts are, for this
3 reason, reluctant to bifurcate class and merits discovery” because “the class
4 certification decision requires ‘a rigorous analysis’ of Rule 23(a)’s prerequisites, and
5 ‘[s]uch an analysis will frequently entail overlap with the merits of the plaintiff’s
6 underlying claim.” *Blair v. Assurance IQ LLC*, No. C23-0016-KKE, 2023 WL
7 6622415 at 6 (W.D. Wash. Oct. 11, 2023).

8 The individual merit based discovery that will determine Plaintiff’s standing
9 and class certification discovery have **considerable overlap in this action**. As stated
10 above, courts find it extremely difficult to distinguish and bifurcate individual and
11 precertification discovery because the two are so closely intermingled. As *Gusman*
12 stated, “the merits and certification distinction is not always clear.” The documents
13 that would be requested for both matters are substantially similar; Plaintiff’s time and
14 payroll records, her wage statements, Defendants’ policies and procedures, and
15 Plaintiff’s schedule, to the extent that they exist. Additionally, the deponents for both
16 matters will be the same or substantially the same, and the parties will likely rely on
17 the same expert to provide similar analysis. Furthermore, contact information for
18 putative class members would be produced for both matters, as Plaintiff is entitled to
19 class contact information for certification and putative class members will serve as
20 witnesses to determine Plaintiff’s standings. Given this significant overlap between
21 discovery in the two matters, this factor clearly weighs against bifurcation.

22 Defendants try to cite several cases that they claim should convince this court
23 to bifurcate discovery in this action. Yet, Defendants’ cases fail to support their
24 position. First, Defendants cite *Drennan v. Maryland Cas. Co.*, 366 F. Supp. 2d 1002
25 (D. Nev. 2005). Yet, *Drennan* actually supports Plaintiff’s contention that bifurcated
26 discovery should not be allowed in this action. In *Drennan*, the court held that even
27 though the matters themselves should be bifurcated, **discovery should not**. *Drennan*
28 v. *Maryland Cas. Co.*, 366 F. Supp. 2d 1002, 1008 (D. Nev. 2005). This is the case

1 because even though the matters themselves may be bifurcated, discovery for the two
2 claims are so interrelated and overlapping, that joint discovery would be beneficial to
3 avoid wasting resources. Indeed, *Brennan* demonstrates that **even when two claims**
4 **are wholly distinct and subject to bifurcation, discovery can still overlap to the**
5 **point where bifurcation of discovery is inappropriate.**

6 Defendants then try to cite to *Young v. Mophie, Inc.*, No.
7 SACV19827JVSDFMX, 2020 WL 1000578 (C.D. Cal. Jan. 7, 2020). Yet, *Young* is
8 entirely distinguishable from the action at hand. *Young* was *not* a wage and hour class
9 action case. Rather, it was class action regarding false advertising. In *Young*, two
10 named plaintiffs bought two power banks out of *thousands*, if not more, that were
11 produced by defendant. As such, the court found that it would be appropriate to
12 conduct discovery regarding the specific power banks purchased by the two plaintiffs
13 to determine if **those two specific power banks** were defective. If it was determined
14 that the two power banks were defective, then they clearly would not have standing
15 to sue. Yet, unlike in *Young*, Plaintiff does *not* allege a specific item or product is
16 what causes the harm alleged in her complaint. Rather, it was Defendants'
17 **overarching policies and procedures affecting the class as a whole** that caused the
18 harm. Nothing in the policies or procedures misclassifying employees as independent
19 contractors was specific to Plaintiff, unlike the particular power banks purchased by
20 the Plaintiffs in *Young*. **The policies that affected Plaintiff are the exact same that**
21 **would affect the other class members.** There is no room for idiosyncrasies and
22 defective manufacturing in Defendants' policies, unlike in *Young*.

23 Defendants then try to equate Plaintiff's case to *Deleon v. Time Warner Cable*
24 *LLC*, No. CV 09-2438 AG (RNBX), 2009 WL 10674767 (C.D. Cal. Nov. 2, 2009).
25 *Deleon* should not be considered because the document cited by Defendants is not a
26 final order, it is **simply a tentative ruling**. Therefore, we cannot definitively determine
27 if the court adopted this ruling. Additionally, *Deleon* is more than a decade old, and
28 there are more recent cases from the 9th Circuit and Central District of California that

1 are exactly on point. In fact, the factors identified in *True Health Chiropractic Inc v.*
2 *McKesson Corp.*, No. 13-CV-02219-JST, 2015 WL 273188 at 1-2 (N.D. Cal. Jan. 20,
3 2015) that are widely used in the 9th circuit did not even exist when *Deleon* was
4 decided. As such, *Deleon* is clearly outdated and should not be relied upon.

5 Instead, Plaintiff's action should be compared to *Reed*, a more recent wage and
6 hour class action in the Central District of California. Here, the court ruled discovery
7 regarding a Plaintiff's standing, merits-based discovery, and pre-certification
8 discovery all overlap and bifurcation would thus be inappropriate. *Reed v.*
9 *AutoNation, Inc.*, No. CV1608916BROAGRX, 2017 WL 6940519 at 7 (C.D. Cal.
10 Apr. 20, 2017). Similarly in this action, it would be inappropriate to have bifurcation
11 in this action when standing and merits based discovery so heavily overlap with
12 certification.

13 **2. Bifurcation Would Not Support The Purpose of Rule**
14 **23(c)(1)(A)**

15 9th Circuit courts have repeatedly held that bifurcation does not support the
16 purpose of Rule 23(c)(1)(A). See *True Health Chiropractic Inc v. McKesson Corp.*,
17 No. 13-CV-02219-JST, 2015 WL 273188 at 1-2 (N.D. Cal. Jan. 20, 2015) and *Blair*
18 *v. Assurance IQ LLC*, No. C23-0016-KKE, 2023 WL 6622415 at 6 (W.D. Wash. Oct.
19 11, 2023). *Reed* denied defendant's motion for bifurcation as it would cause delay in
20 litigation and certification process. *Reed v. AutoNation, Inc.*, No.
21 CV1608916BROAGRX, 2017 WL 6940519 at 7 (C.D. Cal. Apr. 20, 2017). Similarly,
22 *Johansen* also denied bifurcation largely because it would delay plaintiff's Motion for
23 Class Certification until the court rules on the purported individual issues. *Johansen*
24 *v. Loandepot.com LLC*, No. SACV2000919DOCJDE, 2020 WL 7230976 at 1 (C.D.
25 Cal. Nov. 10, 2020). *Kamrava* also denied bifurcation as "it would not promote rule
26 23's requirement that certification be decided at an early practical time." *Kamrava v.*
27 *Cenlar Cap. Corp.*, No. 220CV11465ABEX, 2021 WL 10373035 at 2 (C.D. Cal. Oct.
28 7, 2021). *Kamrava* reasoned that should discovery be bifurcated, all other discovery

1 shall be stayed for several months, causing extended delays to the filing of a Motion
2 to Certify and affecting defendant's proposed scheduling order. *Ibid.*

3 The Parties submitted their scheduling order on January 26, 2024. Doc. No. 47.
4 The motion to bifurcate was not submitted until *more than two months* after the
5 scheduling order was issued. The proposed scheduling order states the last day to hear
6 a Motion for Certification is December 6, 2024 and discovery cutoff is November 15,
7 2024. According to the rules of this court, the motion for Class Certification must be
8 submitted at least 31 days prior to a hearing date. Meaning, according to the agreed
9 upon scheduling order, Plaintiff is required to submit her Motion for Class
10 Certification by November 5, 2024. Yet, according to Defendants' new proposed
11 scheduling order, Phase 1 discovery shall begin 120 days after the court enters its
12 order regarding bifurcation. Assuming the court enters an order on the day of the
13 hearing, Phase I will end on September 14, 2024. Defendants' dispositive motions
14 will be due 60 days after the close of Phase I discovery, or November 13, 2024. This
15 is more than *one week after* Plaintiff's Motion for Class Certification is currently due.

16 Discovery for Phase II, or certification discovery, will only begin 14 days after
17 the court makes its decisions on any dispositive motions. Assuming the court has a
18 hearing date available exactly 31 days after the filing of the dispositive motion, the
19 court will hear any potential Motion for Summary Judgment on December 14, 2024
20 the earliest. Since Phase II can only commence 14 days after this Court makes a
21 decision on any hearing, Plaintiff can finally begin its certification discovery on
22 December 28, 2024, or 22 days after the last day for this court to hear Plaintiff's
23 Motion for Class Certification. This court denied bifurcation in *Kamrava* for *this exact*
24 *same reason*; undue delay of class certification. Here, certification **discovery** will be
25 stayed for *at least* seven months. This is not even mentioning the time it takes to
26 conduct class wide discovery and to prepare a Motion for Class Certification. Indeed,
27 bifurcation would result in a several months long delay in the certification process
28 and affect the previously agreed upon scheduling order.

1 Yet, Defendants have failed to provide *any* legitimate reasoning as to why it
2 cannot just file any potential dispositive motions without bifurcation. There is
3 **absolutely no reason** that Defendants cannot file dispositive motions on their bogus
4 claims that Plaintiff is exempt from California law and was not misclassified while
5 simultaneously meeting the purpose of Rule 23(c)(1)(A). Unlike in *Young*,
6 Defendants have failed to specifically outline the costs of participating in discovery.
7 *Young v. Mophie, Inc.*, No. SACV19827JVSDFMX, 2020 WL 1000578, Footnote 2
8 (C.D. Cal. Jan. 7, 2020). Defendants simply make vague and illusory claims that they
9 will be prejudiced if this court does not bifurcate discovery.

10 As such, it is clear that bifurcating discovery will not serve the purpose of Rule
11 23(c)(1)(A) and will cause undue delays in the certification process.

12 3. Bifurcation Does Not Support The Judicial Economy

13 Courts within the 9th Circuit found that bifurcation does not benefit the
14 judicial economy. *Gravity Defyer Corp. v. Under Armour, Inc.*, No. LACV13-01842
15 JAK (JCGx), 2013 WL 12138987, at 3 (C.D. Cal. July 23, 2013) (“Defendants have
16 not carried their burden to show that bifurcation will result in a significantly more
17 efficient proceeding. On the contrary, bifurcation may well lead to significant
18 additional costs”); *Lim v. Nat’l Gen. Ins. Co.*, No. C15-0383RSL, 2015 WL 12025327,
19 at 2 (W.D. Wash. June 25, 2015) (finding that bifurcation “would likely increase costs
20 and inefficiencies for the parties and the Court”); *White v. E-Loan, Inc.*, No. C 05-
21 02080 SI, 2006 WL 2850041, at 3 (N.D. Cal. Oct. 5, 2006) (“In any event, given the
22 overlapping nature of the issues involved and the practical difficulties and
23 inefficiencies of bifurcating discovery, such bifurcation is simply not judicial
24 efficient.”)

25 As the court in *True Health Chiropractic* states, “but the Court also finds that
26 bifurcation has the potential to complicate this litigation further, even if the named
27 plaintiffs are not adequate class representatives. **And if the named plaintiffs are**
28 **adequate class representatives, bifurcation will not have streamlined anything**

1 **or otherwise served the interest of judicial economy.”** *True Health Chiropractic*
2 *Inc v. McKesson Corp.*, No. 13-CV-02219-JST, 2015 WL 273188 at 2 (N.D. Cal. Jan.
3 20, 2015). The court further states that “second, even if discovery proves that True
4 Health and McLaughlin should not represent the class, Defendants appear to assume
5 that the case will be dismissed, and therefore that neither the parties nor the Court will
6 have anything left to do in the case. In reality, however, if True Health and
7 McLaughlin are found to not meet the class definition, **Plaintiffs will likely seek to**
8 **proceed with the case by finding other, adequate representatives.**” *Ibid* at 2.

9 Indeed, courts have found that bifurcation of discovery is only beneficial to the
10 court when assuming a Defendant will win on a motion for summary judgment, and
11 even then the judicial economy may not benefit. In *Reed*, the court held that a
12 defendant failed to meet its burden of showing bifurcation will benefit the judicial
13 economy because “if the Court does not grant Defendant's Motion for Summary
14 Judgment on the standing issue the parties will have to depose many of the relevant
15 parties twice, resulting in significant expense to Plaintiff and Plaintiff's counsel; and,
16 there will be a significant delay in the litigation if the Court denies Defendant's Motion
17 for Summary Judgment on standing and merits discovery has not yet begun.” *Reed v.*
18 *AutoNation, Inc.*, No. CV1608916BROAGR, 2017 WL 6940519 at 7 (C.D. Cal.
19 Apr. 20, 2017).

20 Once again, unlike in *Young*, Defendants failed to specifically address *how*
21 bifurcation would serve to save this court and the parties resources. This by itself is
22 also grounds for a denial of a Motion to Bifurcate. See *Kamrava v. Cenlar Cap. Corp.*,
23 No. 220CV11465ABEX, 2021 WL 10373035 at 2 (C.D. Cal. Oct. 7, 2021) (stating
24 “Moreover, Defendant has not carried its burden in demonstrating that it would be
25 prejudiced if discovery is not bifurcated. **Defendant did not provide any estimates**
26 **of the expected costs and time to be incurred.**”)

27 Indeed, the judicial economy stands to be severely harmed by bifurcating these
28 matters, because if Plaintiff wins any dispositive motion, Plaintiff will need to conduct

1 a second set of depositions, retain the same experts, and serve another set of discovery.
2 Furthermore, with all of the additional discovery conducted, the likelihood of
3 additional motion work *not* related to dispositive motions increases. This action was
4 filed on April 20, 2024. This case was removed to this court on June 21, 2023. This
5 case finally left the pleading stage on April 24, 2024, *one year after* it was filed despite
6 extensive motion work, most of which was filed and commenced by Defendants such
7 as their meritless anti-SLAPP motion. There are currently more than 80 documents
8 on the docket. Once again, Defendants have failed to state a reason as to why they
9 cannot file their dispositive motions while also participating in pre-certification
10 discovery. This would save all parties involved in this case resources long term and
11 ensure certification occurs as soon as possible.

12 Not only did Defendants fail to meet their burden to show that judicial
13 resources will be spared in the granting of bifurcation, but it is abundantly clear
14 bifurcation will have the *opposite* effect and increase the costs and burden on the
15 judicial economy.

16 **4. Plaintiff Will Be Prejudiced Should This Motion Be Granted**

17 Defendants fail to state exactly how they would be prejudiced should discovery
18 not be bifurcated. Defendants have a declaration of a single person they claim to be a
19 putative class member. This declaration discusses the horrible treatment individuals
20 in the adult modeling industry suffer and the dangers they would face if their
21 information became public knowledge. While Mr. Kross' concerns are
22 understandable, they are unfounded. As discussed above, this is hardly the first-class
23 action where class member privacy is valued. The parties can give putative class
24 members the opportunity opt out of providing their information, they can enter into a
25 protective order, redact personal identifiers on relevant documents, etc. There are
26 many avenues the parties can take to safeguard the privacy of class members without
27 stifling Plaintiff's right to discovery.
28

1 Additionally, unlike in *Young*, Defendants do not provide a specific outline of
2 costs. **It is Defendants’ burden to show that Defendants would be prejudiced**
3 **should bifurcation not be granted and that Plaintiff would not should bifurcation**
4 **be granted**. Failing to provide specific costs of procuring discovery without
5 bifurcation is a failure to meet that burden. *Kamrava v. Cenlar Cap. Corp.*, No.
6 220CV11465ABEX, 2021 WL 10373035 at 2-3 (C.D. Cal. Oct. 7, 2021). Indeed,
7 because Defendants failed to demonstrate they would be prejudiced if this motion is
8 not granted and that Plaintiff would not be prejudiced if it is granted, Defendants have
9 failed to meet their burden. *Reed v. AutoNation, Inc.*, No. CV1608916BROAGR, X,
10 2017 WL 6940519 at 7 (C.D. Cal. Apr. 20, 2017) (stating “Defendant has not
11 established that allowing only standing discovery to proceed encourages judicial
12 economy and will not prejudice Plaintiff...”)

13 Indeed, it is actually *Plaintiff* who stands to be burdened by the granting of this
14 motion. *Kamrava* held that bifurcation risks prejudicing a plaintiff since it is the
15 plaintiff “who must meet a high burden to show that certification of the class is proper
16 under Rule 23(a).” *Kamrava v. Cenlar Cap. Corp.*, No. 220CV11465ABEX, 2021
17 WL 10373035 at 3 (C.D. Cal. Oct. 7, 2021). Additionally, bifurcation of discovery is
18 prejudicial to plaintiff's discovery of class information from third parties and increases
19 the risk that evidence will be lost or destroyed. *Johansen v. Loandepot.com LLC*, No.
20 SACV2000919DOCJDE, 2020 WL 7230976 at 2 (C.D. Cal. Nov. 10, 2020); see also
21 *Lathrop v. Uber Techs., Inc.*, No. 14-CV-05678-JST, 2016 WL 97511, at *4 (N.D.
22 Cal. Jan. 8, 2016) (plaintiffs in putative class action may “suffer prejudice from a stay
23 because the case would extend for an indeterminate length of time, increase the
24 difficulty of reaching class members, and increase the risk that evidence will
25 dissipate”). *Johansen* reasoned that since discovery is just beginning, there is no
26 indication that Defendant has satisfactorily preserved all vital records in the matter.
27 *Johansen v. Loandepot.com LLC*, No. SACV2000919DOCJDE, 2020 WL 7230976
28 at 2 (C.D. Cal. Nov. 10, 2020). Additionally, bifurcation would place Plaintiff under

1 additional pressures and additional costs to conduct two separate rounds of discovery
2 in time to prepare for Class Certification.

3 Given that Defendants have failed to meet their burden to show that Defendants
4 would be prejudiced should this motion not be granted and Plaintiff will not be
5 prejudiced should this motion be granted and the clear showing that Plaintiff will be
6 prejudiced, this motion should be denied.

7 **IV. CONCLUSION**

8 For the foregoing reasons, Plaintiff respectfully requests that the Court deny
9 Defendants' Motion in its entirety.

10
11 Dated: April 26, 2024

BIBIYAN LAW GROUP, P.C.

12
13 /s/ Sarah Cohen

14 DAVID D. BIBIYAN

JEFFREY D. KLEIN

SARAH H. COHEN

Attorneys for Plaintiff, MACKENZIE ANNE
THOMA, and on behalf of herself and all
others similarly situated